



SOUTH DAKOTA LEGISLATURE

State Capitol, 500 East Capitol Ave., Pierre, South Dakota 57501-5070

September 16, 2014

Governor Dennis Daugaard
Office of the Governor
500 East Capitol
Pierre, SD 57501

Dear Governor Daugaard:

The Government Operations and Audit Committee has scheduled a meeting for September 24, 2014 in room 414 in the State Capitol Building to review various issues involving state government.

As the Chair of the Committee, I would like to request that you respond to the following questions, asked in a September 5, 2014 press release by Democratic leader Representative Bernie Hunhoff.

1. As a state employee, Joop Bollen granted SDRC Inc, a private company he owned, the contract to administer the EB5 program on January 15, 2008.
 - a. When did Mike Rounds approve this contract?
 - b. Why did Bollen sign the contract on behalf of the State when he incorporated and owned SDRC, Inc.?
 - c. Have you requested or reviewed a copy of Bollen's deposition transcript in the Darley arbitration where Bollen discusses the transactions between the State, his own company, Darley International LLC and Hanul Law Corporation?
 - d. Did you know Bollen was asked at deposition "why didn't you sign on behalf of SDRC, Inc." and he responded "it would look silly"?
 - e. Was this transaction (the contract signed on January 15, 2008) between the State and SDRC, Inc. reviewed by an attorney acting on behalf of the State? Who?
 - f. Do you know if anyone else had an ownership interest in SDRC, Inc. besides Bollen when he signed this agreement on behalf of the State 5 days after forming his company in January 2008?
 - g. Did you know Bollen did not resign from the State until December 21, 2009?
 - h. Did you know Bollen took all the EB5 records with him on December 21, 2009 without permission from NSU? Do you know if anyone from the State gave him permission? Do you know whether the State has copies of those EB 5 files now?
 - i. Did you know that Bollen, on behalf of South Dakota, was requesting recognition of SDRC, Inc. (his own company) by U.S. Immigration Services while he was a state employee?
 - j. Did you know that the foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs, for qualifying U.S. workers, within 2 years of receiving

- conditional permanent residency? Do you know if there is a listing of jobs created with each project in the state that received EB5 funds?
- k. Do you know how much in fees has been received by the State under the Agreement with SDRC, Inc.? How much SDRC, Inc. received?
 - l. When did you first learn about this contract? Did you read it? Ask an attorney to review? Distribute?
2. Clause 6 of the same contract signed between SDIBI and SDRC, Inc. on January 15, 2008, states "SDRC, Inc. shall indemnify, defend, and hold harmless SDIBI, SDIBI/SDRC, the state of South Dakota and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of SDRC, Inc. acts and/or omissions performed under this agreement." South Dakota had multiple opportunities to protect taxpayers:
- a. Who selected the attorneys to represent the States' interests in these matters?
 - b. Who are the primary State contacts with the attorneys representing the State's interests in the Darley arbitration?
 - c. Didn't some of the attorneys representing the State in the above-described matters have an affiliation with Hanul Law Corporation who is a defendant in the Darley arbitration?
 - d. When did you first learn about potential issues with the administration of EB5 issues? Didn't Attorney Rich Williams in the SD AG's office receive notice of EB5 issues several years before the contract with SDRC, Inc. was finally terminated?
 - e. What was your participation in EB5 investor recruiting? Trips? Discussions? Correspondence?
3. Did you inquire whether there was any ongoing litigation that the Board of Regents was engaged in?
4. When did you become aware of the Darley International LLC litigation in California court?
5. In September 2013, you cancelled the EB5 contract with SDRC, Inc.; however, SDRC, Inc. continues to earn money managing existing EB5 loans. Why didn't you rescind the right to manage old EB5 loans when you cancelled the right to manage new loans?

The following additional questions were presented by Senator Larry Lucas:

6. Did Attorney General Marty Jackley inform you that as a state employee, Joop Bollen formed limited liability partnerships that managed EB5 loans?
7. If you were indeed aware of the ongoing Darley International lawsuit concerning Joop Bollen and the EB5 program, why was this information not provided by Commissioner Pat Costello to the Government Operations and Audit Committee earlier this year?
8. When you asked Attorney General Marty Jackley to investigate the EB5 program in the spring of 2013 in response to federal grand jury subpoenas, did Jackley remind you about the substance of the ongoing Darley International lawsuit?
9. Why didn't you rescind the right for SDRC, Inc. to manage existing EB5 loans when you cancelled the right for SDRC, Inc. to manage the EB5 program in September of 2013?

Please submit this information to Tim Flannery, Department of Legislative Audit, 427 South Chapelle, Pierre, SD, 57501.

If you have any questions, please contact Tim Flannery with the Department of Legislative Audit at 773-3595.

Sincerely,

A handwritten signature in black ink, reading "Larry Tidemann". The signature is fluid and cursive, with the first name "Larry" and last name "Tidemann" clearly distinguishable.

Senator Larry Tidemann, Chair
Government Operations and Audit Committee